



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 11, 2014

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M TODD PERKES
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MOORE, ID 83255
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DARLINGTON, ID 83231

RE: 2014 Alternative Mitigation Plan Pursuant to IDAPA 37.03.12.050.e

Dear Gentlemen:

The Idaho Department of Water Resources ("IDWR") has reviewed the above referenced mitigation plan dated May 30, 2014. IDWR received this plan on June 2, 2014, from the Group of Individual Ground Water Users ("GIWU") comprised of Terry Cole, Richard & Monson Cole, Jay and Darlene Jensen, Loy and Byron Pehrson, Todd Perkes, and Mitchell Sorensen. The mitigation plan was submitted to IDWR pursuant to Rule 50 of the Water District No. 34 Water Distribution Rules (IDAPA 37.03.12.050) and in response to a request made under that rule for mitigation by certain holders of water rights ("Petitioners") diverted from the Big Lost River near Moore and Arco. You have specifically referenced the plan as an "Alternative Mitigation Plan Pursuant to IDAPA 37.03.12.050.e." IDWR notes that there is not a rule 37.03.12.050.e but assumes that you intended to submit the plan pursuant to IDAPA Rule 37.03.12.050.**04.e**, which states the following:

Junior ground water users may submit an alternative mitigation plan(s), which identifies actions and measures to prevent or compensate for impacts of diversions by the junior ground water users, to the director for consideration pursuant to Rule 43 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37, Title 03, Chapter 11.

Assuming that GIWU's plan has been submitted pursuant to Rule 50.04.e, then IDWR finds that components of the plan can be evaluated as an alternative mitigation plan subject to considerations under Rule 43 of the Conjunctive Management Rules ("CMRs"). IDWR therefore approves certain components of the plan and rejects other components subject to the conditions outlined below.

Release and Delivery of Stored Water allocated to GIWU members to augment the natural flow of the river (Attachment II of plan):

GIWU intends to dedicate up to 654 acre-feet (AF) of water stored in Mackay Reservoir that is allocated to GIWU members to be used "exclusively for the general augmentation of the natural river flow and not the direct augmentation of the water rights held by those surface water users calling for mitigation." IDWR cannot approve a plan with this condition. An alternative mitigation plan consistent with CMR 43 should provide replacement water directly to the Petitioner's point of diversion (the canal headings from the Big Lost River) subject to the following conditions:

- The replacement water in this case is the GIWU members' storage water released from the reservoir. This stored water should be delivered from the reservoir to the Petitioners' appropriate canal headings subject to normal river conveyance losses. The remaining stored water should then be conveyed to the Petitioner's field head gate subject to canal losses as determined by the Big Lost River Irrigation District ("BLRID").
- Consent should be obtained from the BLRID to release and deliver the stored water to the Petitioners.

Use of Natural Flow Water Right (Attachment III of plan):

The GIWU plan identifies one natural flow water right (right 34-228B, 6/1/1884 priority) from the Big Lost River below Mackay Reservoir that "will be rotated into credit and then used for mitigation purposes." Your plan further states that the place of use for the right "will not be irrigated this season." The plan further states that drought emergency transfer application(s) are pending if needed although no application(s) copy was provided. IDWR may accept mitigation that proposes the temporary transfer of a senior priority natural flow water right under the following conditions or limitations:

- The natural flow right may be temporarily transferred in 2014 from the authorized point of diversion to the points of diversion (canal headings) of Petitioners in accordance with procedures for filing a temporary drought transfer pursuant to Idaho Code § 42-222A.
- The natural flow right must be available in priority at Petitioners' river canal headings or points of diversion.
- Rotation credit cannot accrue under any natural flow right from the Big Lost River below the Mackay Reservoir if the right holder did not intend to irrigate the place of use under the right (see IDAPA 37.03.12.040.02.d.ii.). Further, IDWR will condition any approval of a temporary drought transfer for this particular right such that rotation credit cannot accrue under the right after approval is given.

Offer Letter(s) to Lease/Rent Ground Water Right(s):

Your plan provided copies of several letters that had been sent to the holders of ground water rights inquiring whether those right holders may be interested in renting all or portions of their rights in this year or subsequent years so that the rights could then be temporarily transferred to lands and diversion facilities of the Petitioners or to augment the Petitioners' water supplies. This component of your plan cannot be approved at this time as no specific ground water right leases/rentals are proposed. However, IDWR would further consider this approach as a potentially acceptable alternative mitigation plan pursuant to IDAPA 37.03.12.050.04.e if specific water right lease/rental proposals were provided. IDWR encourages GIWU and other holders of junior ground water rights in the area to work with the Petitioners to further explore this alternative mitigation approach.

Other Considerations and Conditions:

Rule 50 of the Water District 34 Water Distribution Rules does not include any enforcement provisions. Although components of the plan are approved subject to the conditions provided in this letter, implementation of the plan by GIWU is voluntary. Further, any potential approval of components of your plan will not be binding on other ground water users in Water District 34. Petitioners have the option of pursuing a delivery call under the CMR's whether or not the conditionally approved portions of this GIWU plan are implemented. If a call under the CMRs is made and the Director of IDWR determines injury, mitigation activities implemented pursuant to an approved plan could help to avoid curtailment.

The amount of water provided under your mitigation plan may not be adequate as a replacement water supply to the Petitioners. To determine adequacy, IDWR must consider historical diversions by the Petitioners under similar drought conditions, and the impacts of junior ground water development on the Petitioner's suite of water rights. The Department's analysis of this matter and a final determination of the obligation are forthcoming.

Please advise IDWR if GIWU intends to proceed with implementation of the limited and conditionally approved mitigation plan. Please contact Tim Luke or Nick Miller at 208-287-4800 with any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Luke", written in a cursive style.

Tim Luke
Water Compliance Bureau

cc: IDWR Eastern Region
Seth Beal, Chairman, Water District 34 Advisory Committee
Jim Rindfleisch, Petitioners Representative